@))

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5935 of 1992

HON'BLE MR.JUSTICE K.S.JHAVERI

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VIDYANIKETAN EDUCATION TRUST

Versus

B M ZALA

Appearance:

MR ND NANAVATI for Petitioner No. 1-2

MRS MANISHA SHAH for Respondent No.3 & 5

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 08/12/2004

ORAL JUDGEMENT

1. The petitioner by way of this petition has challenged the decision dated 13th July 1992 passed by the Gujarat Secondary Education Tribunal in Application No.191 of 1991 whereby the respondent no.1 was ordered to be absorbed in the petitioner school.

2. This Court while admitting the petition on 4th September 1992 passed the following order:

"Heard the learned advocates for parties.

Rule. Operation of the impugned order dated 13.7.1992 passed by the Tribunal is stayed. However, it is clarified that it would be open to the D.E.O to allocate suitable surplus lady teacher or S.T. teacher to petitioner No.2 school. Mr. Nanavati,learned advocate for the petitioners, states that he is not pressing the Constitutional validity of section 38 at this stage. Liberty to amend the petition suitably is granted.

For final hearing the office is directed to place this matter before the learned Single Judge."

2. The issue with regard to not maintaining ratio of lady teacher, reserved category, etc. has already been settled by the Supreme Court in the judgement rendered in the case of Atladara Kelavani Mandal Vs. State of Gujarat reported in 2004(1) GLH 383.

3. The Tribunal has not considered the aspect of maintaining lady teacher and reserved category etc. and in view of the decision in the case of Atladara Kelavani Mandal (supra), the order of the Tribunal is required to be modified. Accordingly the impugned order of the Tribunal is quashed and set aside. It will be open for the DEO to absorb the respondent no.1, if he is not absorbed anywhere else so far. It is clarified that in view of the aforesaid decision the issue of privity of contract is not considered by this Court. Rule is made absolute to the aforesaid extent with no order as to costs.

[K.S. JHAVERI, J.]

ar